

QUESTIONS BY THE NEW YORK TIMES AND RESPONSES FROM THE ENVIRONMENTAL PROTECTION AGENCY

Questions about general policies:

-- The Times examined penalties and injunctive relief stemming from cases filed under Mr. Pruitt's tenure at EPA (note: The Times looked at cases started under Pruitt, rather than cases concluded.) The analysis showed a downturn in enforcement, compared to the same period under the Bush and Obama administrations. We are separately providing you a copy of this database, which is based on data pulled from ECHO. We understand that penalties rise and fall over any given time based on when cases happen to be settled. But overall, in both the number of cases initiated and the value of the injunctive relief and penalties, there has been a decline during Mr. Pruitt's tenure. Why has there been a downturn in enforcement?

-- The Times has obtained a May 31, 2017 memo from EPA Washington headquarters, written by Susan Shinkman, titled "Interim Procedures for Issuing Information Requests" that said enforcement staff must seek approval from Washington before they can order certain kinds of information requests, including those that involve testing and monitoring data collection. Who directed Ms. Shinkman to write this memo and why was this policy change made?

-- Representatives from the oil and gas industry, and other industrial sectors, had raised objections to the way that CAA 114 information requests were being made, as was demonstrated through a number of written comment letters to the E.P.A. and during a [June 29, 2016 Senate hearing](#). This includes letters from representatives from North Dakota and Colorado raised objections to a series of CAA 114a requests (see March 31 2017 letter to Mr. Pruitt from North Dakota Petroleum Council) and Mr. Pruitt's wrote a letter back to these groups, including the July 11, 2017 letter to the North Dakota Petroleum Council. Where these voices a factor in the decision to make the policy change regarding the CAA 114a requests for monitoring or testing and CWA 308 requests for monitoring or testing?

-- The revision in policy related to 114a requests and 308 CWA requests has resulted in a reduction in such requests for information, involving monitoring/emissions data and for these requests overall. For example, the Region 5 office, in the last two complete fiscal years of the Obama administration, sent out requests requiring monitoring and testing to 64 facilities -- or about 10 or 11 requests, on average, every four months. In the four months following the policy change in May, the office only sent out one request for monitoring and testing. And in the last two complete fiscal years of the Obama administration, the Region 5 office sent out requests to 267 facilities -- or about 44 requests every four months, on average. In the four months following the policy change in May, the office only sent out requests to 13 facilities. Do you dispute that the policy change is a factor in the reduction of such requests?

-- Has Washington rejected requests for monitoring and testing 114a or equivalent requests under 308 CWA, and if so, how many times? Can you provide us with a spreadsheet of all the requested and approved requests?

-- Region 5 has lost at least 61 people since Jan. 1 2017, according to data released via FOIA. This is about 5 percent of the staff. The agency, overall, has lost more than 700 people this year, many via buyouts. How have buy outs and a hiring freeze at EPA affected enforcement, from your perspective?

-- Regional administrators from around the United States were in Washington last week and among the topics discussed was a requests by these regional administrators to allow them to fill certain critical vacancies that are preventing from doing mission critical work, like enforcement efforts. Will you approve these hires?

-- You have not appointed a permanent leader for the Region 5 office. Why is this job still vacant. The vacancy has meant a lack of leadership in this critical EPA office that has left agency employees. Is this a matter that concerns you?

-- Current EPA employees in the region 5 office told us that they felt hampered and demoralized by orders from Washington, particularly the memo that limited information requests. They also said they had been left without a permanent leader, resulting in a lack of clear direction regarding what Region 5's priorities should be. There is also a fear, they said, that if enforcement officers moving too quickly to enforce environmental laws that they could be reprimanded or draw unwanted scrutiny from headquarters. Do you have any response to this?

--One employee in Region 5 we spoke with who work on CWA said her efforts to collect information on actual health hazards in discharges coming from municipal storm water and sewage collection systems has been handicapped by the May memo. Do you dispute this? If so, why?

-- Mr. Pruitt has argued that the EPA is turning more to state and local governments to investigate and take actions against polluters. But long-time agency employees have said the emphasis on cooperative federalism is a way to weaken enforcement across the board since there are certain cases that states cannot pursue, such as multistate cases, and because states sometimes are reluctant to go after big employers in their jurisdiction. Also, critics of the policy have pointed out that the Trump administration has proposed cuts in state grants that have helped fund enforcement efforts. How do you respond to that criticism? Please explain how cooperative federalism can work, despite those challenges.

-- Lawyers who work on EPA cases have said that the EPA and DOJ have been more willing to compromise on cases against cities who have been targeted for Clean Water Act violations. Why is that?

Here are several questions related to specific facilities:

-- The EPA sent a notice of violation to Heritage Thermal Services in March 2015 stemming from a plant malfunction in 2013 that left parts of the city of East Liverpool, Ohio, covered in ash that contained in some locations toxic substances. The EPA's case has not been resolved with penalties or injunctive relief, despite evidence that Heritage has continued to violate environmental laws in the meantime -- the Ohio EPA issued another notice of violation to the facility earlier this year. Why has this case taken so long to resolve?

-- Many plants across the United States that have received formal warnings from the U.S. Environmental Protection Agency in the past three years without facing penalties or other enforcement actions from the agency. In particular, we are looking at these specific cases with NOV but no follow-up enforcement action, as examples. We have asked Region 5 about these cases. Wanted to see if you had anything else you can discuss related to following up on these notices of violations?

- S.H. Bell in East Liverpool, Ohio
- Globe Metallurgical in Waterford, Ohio
- TimkenSteel in Canton, Ohio
- Indiana Harbor Coke in East Chicago, Indiana

-- The E.P.A. moved in the final days of the Obama administration to resolve S.H. Bell case in East Liverpool, proposing a series of improvements the company needed to make to reduce the manganese dust and to enhance monitoring to make sure it had stopped. In March, the Trump administration asked a federal judge to delay the case, so the E.P.A. could “brief incoming administration officials with decision-making responsibility about this case,” given that “many subordinate political positions at the agency remain unfilled.” The Justice Department has ultimately come back and asked the court to move ahead, but the matter remains unresolved, which is rare for a case that already had a signed consent decree. Why has this matter remained unresolved?

Thanks in advance for your help

RESPONSE FROM THE EPA TO THE NEW YORK TIMES

ON THE RECORD STATEMENTS ...

“The last administration crippled EPA’s criminal enforcement program, as they cut 24 percent of the agents who pursued environmental violations. Administrator Pruitt is highly supportive of our program, he took the unprecedented step of meeting with our criminal investigators and reaffirmed that we’d have the resources to carry out our mission.” – Henry Barnet, director of EPA’s Office of Criminal Enforcement, Forensics, and Training.

“We have not rejected any requests for sampling, monitoring and testing under 114 and 308,” - EPA spokesperson

“There is no reduction in EPA’s commitment to ensure compliance with our nation’s environmental laws. EPA and states work together to find violators and bring them back into compliance, and to punish intentional polluters,” – EPA Spokesperson

“As part of this effort, we are collaborating more with states and we are focusing more on outcomes. Unless the activity is criminal, we focus more on bringing people back into compliance, than bean counting. This means that it is okay for EPA Regions to share the work with states, and it is okay for Regions to use informal as well as formal enforcement actions,” – EPA Spokesperson

RESPONSES TO YOUR QUESTIONS:

Penalties and Injunctive Relief: This administration is focused on achieving and maintaining compliance with environmental laws through aggressive enforcement against bad actors and compliance assistance for small businesses. We are focused on outcomes.

For example, the Agency’s draft Strategic Plan for FY 2018-2022 includes two new enforcement measures, enforcement of and compliance with environmental laws: reducing the time between identification and correction of environmental law violations and increasing the environmental law compliance rate. These outcomes can be achieved through a variety of enforcement tools.

With respect to the data pull from ECHO, *The New York Times* only looked at cases filed in the past nine months. **It takes months or even years to develop a case to the point that a final order is lodged or a case has been filed**, so data from the last nine months is not dependent solely on work that has been performed during this administration.

Memo: We have not rejected any requests for sampling, testing or monitoring data collection under 114 or 308.

EPA has always – throughout many administrations – had criteria for issuing information requests. The memo is to ensure that the criteria that has existed at EPA for years – throughout many administrations – is being followed.

June Senate Hearing: The request for information authority under the Clean Air Act and the Clean Water Act are broad and powerful tools that must be used with great prudence. For over 15 years, EPA has maintained internal guidance and controls on the use of these authorities. This administration has continued the multi-decadal work of the enforcement office to formulate policies that ensure that these information collection tools are appropriately tailored to gather the information required for enforcement.

114a and 308 Requests: EPA is working on enforcement cases as the Agency always has. Each information request is issued based on a case-by-case evaluation of the needs of the particular investigation. This administration fully supports the prudent, tailored use of requests for information.

Variations in 114 numbers over time are related to regional processes, cycles in securing information and then working the cases.

We have not rejected any requests for sampling, testing or monitoring data collection under 114a or 308.

Hiring: OECA has approval to hire additional criminal enforcement agents.

Regional Administrators: We continue to work on bringing our regional administrators on board, and will continue to work with the acting regional administrators in the meantime.

Administrator Pruitt strongly supports the enforcement program.

Onsite Inspections: Funds for enforcement personnel has decreased through a steady trend over the last eight years. This administration is accomplishing vigorous enforcement of our environmental laws through a focus on violations, partnerships with the states and an increased use of e-reporting, data evaluation, and other enforcement tools – in addition to inspections to monitor compliance.

Cooperative Federalism: Cooperative federalism means cooperation. As noted in a recent letter from the Deputy Regional Administrator in Region 7 to the State of Missouri, there are a variety of reasons for EPA take enforcement action in an authorized state. But, under cooperative federalism EPA and state managers consult with one another.

EPA/DOJ: EPA continues to carry out the principles for working with cities on Clean Water Act violations outlined in the Integrated Planning Framework issued in June 2012.

Specific Facilities: We agree that it is important to achieve a return to compliance as quickly as possible and to not let cases languish. The new enforcement measures in EPA's Strategic Plan will bring management attention to cases that are not progressing so issues can be resolved in a short time frame.

The motion to enter the S.H. Bell consent decree was filed on March 28, 2017. We are waiting for the court to act. It would not be appropriate to discuss the open enforcement matters.

ADDITIONAL BACKGROUND:

EPA's draft strategic plan has a new enforcement measure that will track how quickly we can return violators to compliance. The Public Review Draft of the FY 2018-2022 EPA Strategic Plan proposes a new measure of: Reduce the time between the identification of an environmental law violation and its correction.

Our data tracking systems are still catching up with this focus on environmental outcomes. So right now we are not recording all of the good enforcement work that is being done out in the Regions, but we will do that under our new strategic plan.

Trends: There is no "trend"—the enforcement office remains focused on fostering compliance and correcting noncompliance, and as always, this work is done on a case-by-case basis.

Data:

Since January 20, 2017, through the end of FY 2017, DOJ's Environment and Natural Resources Division, in coordination with EPA have imposed:

- More than \$1.72 billion in civil penalties, cost recovery, natural resource damages, and other monetary recoveries;
- More than \$2.91 billion in criminal fines, restitution, and other assessments; and
- More than \$3.13 billion in injunctive relief and environmental mitigation projects.

This administration is focused on achieving and maintaining compliance with environmental laws. That means aggressive enforcement against bad actors, and compliance assistance for small businesses. It also means focusing on the outcome of compliance. For example, the Agency's current Strategic Plan for FY 2018-2022 includes two new enforcement measures for reducing the time between identification and correction of environmental law violations and increasing the environmental law compliance rate. These outcomes can be achieved through a variety of enforcement tools.

With respect to the data pull from ECHO, the *Times* only looked at cases filed in the past nine months. It takes months or even years to develop a case to the point that a final order is lodged or a case has been filed, so data from the last nine months is not dependent solely on work that has been performed during this administration.

Additionally,

- As the recent report we discussed admits, "enforcement results may vary over the short term." This is nowhere more true than in judicial consent decrees. These are our most complex, significant cases, which take the longest to develop and conclude. Settlements lodged during the first nine months of this administration therefore have much more to do with the pace of enforcement near the end of the last administration, than the commitment to the rule of law and enforcement in this administration.
- Our enforcement data show that there was a drop in enforcement intensity during the first year of the Obama administration (measured by value of injunctive relief, penalties assessed, and environmental benefits).
- EPA's FY2017 enforcement accomplishments were dominated by the massive VW settlements. However, even backing out settlements like VW with penalties greater than \$1 billion, **civil penalties collected in FY2017 (\$175 million) compare favorably to the Obama administration average of \$165 million.**

Cooperative Federalism: Cooperative federalism in enforcement means looking to states to enforce environmental laws where they have the capability. If a state lacks capability (for example, a state might not have deep technical resources or a public health crisis overwhelms the ability of a state to respond), then EPA will be there in partnership with the state to enforce the law. For example, Pennsylvania Department of Environmental Protection and EPA worked together to perform a comprehensive performance evaluation of the Pittsburgh Water and Sewer Authority (PWSA) distribution system ([PDEP Press Release](#), 10/25/17)

Example Enforcement Actions Announced Since Close of FY17:

- **ExxonMobil:** \$300M air pollution settlement with Exxon, 10/31/17
- **PDC Energy:** EPA, Colorado reach \$21 million-plus settlement with PDC 10/31/17
- **Macy's:** EPA Settled with Macy's over Hazardous Waste Violations 10/25/17
- **RIN Fraud:** This individual defendant purchased renewable fuel with attached RINs, sold the fuel, and instead of retiring the RINs as required, sold the RINs separately and illegally for \$31.8 million. He also committed tax fraud to the tune of \$1.2 million by claiming renewable fuel tax credits to which he was not entitled, 10/23/17
- **Superfunds:** For one example, EPA held 40 parties responsible to finance and perform a \$51.5 million EPA-approved cleanup 10/13/17

EPA Enforcement Actions Help Protect Vulnerable Communities Across the Country from Lead-Based Paint Health Hazards

- [127 Federal Enforcement Actions on Lead](#) (up from previous year): From October 2016 through September 2017, EPA finalized 121 civil settlements for alleged violations of one or more of the three lead-based paint rule --and filed three complaints for ongoing actions. ([EPA press release](#), 10/27/17)
- In seven settlements this year, the alleged violator agreed to fund a community-based lead paint abatement project, like window replacements, to eliminate risks. Collectively, the projects are valued at **\$2,406,734**. The settlements require the alleged violator to come into compliance with the law and, in most cases, to pay a civil penalty. Collectively, the settlements require alleged violators to pay **\$1,046,891 in penalties**.
- [From October 2015 through September 2016](#), EPA entered into 123 settlements for alleged violations of one or more of the three lead-based paint rules. Each settlement requires that the alleged violator return to compliance and, in most cases, pay civil penalties. Collectively, the settlements require violators to pay **\$1,046,655 in penalties** ([EPA Press Release](#), 11/03/16)

EPA Forces ExxonMobil to Pay \$2.5 Civil Penalty & \$300 Million On Pollution-Control Technology Plants ...

Under Agreement with the Justice Department and Environmental Protection Agency, ExxonMobil to Reduce Harmful Air Pollution at Eight U.S. Chemical Plants. "The Department of Justice, the U.S. Environmental Protection Agency (EPA), and the Louisiana Department of Environmental Quality (LDEQ) announced a settlement today with Exxon Mobil Corp. and ExxonMobil Oil Corp., (ExxonMobil) that will eliminate thousands of tons of harmful air pollution from eight of Exxon's petrochemical manufacturing facilities in Texas and Louisiana. The settlement resolves allegations that ExxonMobil violated the Clean Air Act by failing to properly operate and monitor industrial flares at their petrochemical facilities, which resulted in excess emissions

of harmful air pollution. ExxonMobil will spend approximately \$300 million to install and operate air pollution control and monitoring technology to reduce harmful air pollution from 26 industrial flares at five ExxonMobil facilities in Texas—located near Baytown, Beaumont, and Mont Belvieu—and three of the company’s facilities in Baton Rouge, Louisiana. Once fully implemented, the pollution controls required by the settlement are estimated to reduce harmful air emissions of volatile organic compounds (VOCs) by more than 7,000 tons per year. The settlement is also expected to reduce toxic air pollutants, including benzene, by more than 1,500 tons per year. The Louisiana Department of Environmental Quality is also a signatory of today’s settlement, which resolves alleged violations of Louisiana law at ExxonMobil’s three plants in Baton Rouge, Louisiana. ‘This settlement means cleaner air for communities across Texas and Louisiana, and reinforces EPA’s commitment to enforce the law and hold those who violate it accountable,’ said EPA Administrator Scott Pruitt. ‘As this agreement shows, EPA is dedicated to partnering with states to address critical environmental issues and improving compliance in the regulated community to prevent future violations of the law.’” ([EPA Press Release](#), 10/31/17)

Trump admin inks \$300M air pollution settlement with Exxon “The Trump administration has reached a deal worth more than \$300 million with Exxon Mobil Corp. to settle claims that eight of its plants released unacceptable amounts of air pollutants ... Exxon is also paying \$2.5 million in civil penalties to the Environmental Protection Agency (EPA) and state agencies, and spending \$1 million to plant trees in a city near one plant. The EPA and the Justice Department announced the settlement Tuesday, along with a settlement with Colorado-based PDC Energy Inc. to resolve claims that its natural gas condensate facilities in the Denver area exceeded legal emissions limits. That agreement is worth more than \$22 million ... The settlements come amid accusations from environmentalists and Democrats that the Trump administration is going soft on enforcing the law against polluters. Administration officials argued that the Exxon and PDC settlements demonstrate the opposite. ‘We will be enforcing environmental laws in this administration. That’s not just my message, that’s the message straight from the top of the organization. This administration is absolutely committed to the enforcement of the law, with prudence and with excellence,’ said Patrick Traylor, the deputy head of the EPA’s law enforcement office. ([The Hill](#), 10/31/17)

Exxon settles pollution case with US, will upgrade 8 plants. “Exxon Mobil settled violations of the clean-air law with the Trump administration by agreeing to pay a \$2.5 million civil penalty and spend \$300 million on pollution-control technology at plants along the Gulf Coast. Federal officials said Tuesday that the settlement will prevent thousands of tons of future pollution, including cancer-causing benzene, from eight petrochemical plants in Texas and Louisiana. Some environmentalists criticized the settlement as insufficient punishment for years of violations by the giant oil company, while others said it addressed excess burning or flaring of gas, a major pollution problem at refineries and chemical plants. The deal with the U.S. and Louisiana settles allegations that Exxon violated the federal Clean Air Act by releasing excess harmful pollution after modifying flaring systems at five plants in Texas and three in Louisiana. The allegations date back more than a decade. Exxon said it will install and increase efficiency of the flaring systems and monitor for benzene outside four of the plants. U.S. officials said the deal will cut emissions of toxic pollutants including benzene by 1,500 tons a year and reduce release of other chemicals by thousands of tons.” ([The Washington Post](#), 10/31/17)

EPA Holds PDC Energy Accountable ...

DOJ, EPA and State of Colorado Reach Agreement With PDC Energy, Inc. to Resolve Litigation and Reduce Air Pollution. “The Department of Justice, the U.S. Environmental Protection Agency (EPA), and the State of Colorado today announced a settlement with Denver-based PDC Energy, Inc. resolving Clean Air Act violations alleged in a civil complaint. The complaint filed June 26, 2017 alleged that PDC violated requirements to reduce volatile organic compound (VOC) emissions from its oil and gas exploration and production activities in the Denver area. This case arose from a series of Colorado inspections that found significant VOC emissions from PDC’s condensate storage tanks. Under the settlement, PDC will spend an estimated \$18 million on system upgrades, improved operations and maintenance practices, monitoring, and inspections to reduce emissions. PDC will also be required to implement environmental mitigation projects at certain sites to further reduce VOC and nitrogen oxide (NOx) emissions at a cost of \$1.7 million. The settlement includes a \$2.5 million civil penalty, which will be split evenly between the United States and the State of Colorado. The state’s share of the penalty may be offset by up to \$1 million by performing one or more state-only supplemental environmental projects. EPA estimates that modifications to the vapor control systems, along with operational and maintenance improvements and increased monitoring, will reduce VOC emissions by more than 1,600 tons per year. PDC already has begun this work, which must be completed on a phased schedule with a deadline of June 30, 2019 for the last phase. ‘This agreement will result in cleaner air in the Denver area and shows that EPA is committed to enforcing the law in order to ensure public health is protected,’ said EPA Administrator Scott Pruitt. ‘This case exemplifies the strong partnerships with states that are integral to delivering results for American communities and finding solutions that build compliance with the law and prevent future violations.’” ([EPA Press Release](#), 10/31/17)

EPA, Colorado reach \$21 million-plus settlement with Denver-based oil and gas company for smog-causing pollution. “A Denver-based oil and gas company has reached a \$21 million-plus settlement with the Environmental Protection Agency and state regulators for leaking smog-causing pollutants into the air from its operations sites around the city dating back roughly four years. As part of the agreement, PDC Energy Inc. — one of the largest oil and gas drillers along the Front Range — has agreed to pay a \$2.5 million civil penalty that will be split between the federal government and Colorado. It will also spend \$18 million on system upgrades and improved maintenance practices, monitoring and inspections to reduce emissions, as well as

\$1.7 million to implement environmental mitigation projects. 'This agreement will result in cleaner air in the Denver area,' EPA Administrator Scott Pruitt said in a written statement." ([The Denver Post](#), 10/31/17)

PDC Energy settles federal, state lawsuit over oil and gas pollution in Colorado. "PDC Energy Inc. has agreed to a \$22.2 million settlement to end a lawsuit filed in June by the U.S. Environmental Protection Agency, the U.S. Department of Justice and state air pollution officials, pledging to improve emission control systems on storage tanks in Colorado's Denver-Julesburg Basin. The settlement, announced Tuesday, comes about three months after the suit was filed accusing the Denver oil and gas company (Nasdaq: PDCE) of violating state and federal pollution standards by emitting volatile organic compounds from its storage tanks. The suit alleged the company violated the federal Clean Air Act and the Colorado Air Pollution Prevention and Control Act, the state's federally approved 'State Implementation Plan' designed to reduce pollution in Colorado, and the state's air quality regulations. VOCs are chemicals which can 'cook' on hot, sunny days to form ozone. Ozone is a pollutant that irritates the lungs, exacerbates diseases such as asthma, and can increase susceptibility to respiratory illnesses, such as pneumonia and bronchitis. EPA Administrator Scott Pruitt, in a statement, said the settlement 'will result in cleaner air in the Denver area and shows that EPA is committed to enforcing the law in order to ensure public health is protected.' 'This case exemplifies the strong partnerships with states that are integral to delivering results for American communities and finding solutions that build compliance with the law and prevent future violations,' Pruitt said." ([Denver Business Journal](#), 10/31/17)

In October 2017, Scott Pruitt wants to end regulation through litigation. "Environmental Protection Agency Administrator Scott Pruitt issued a directive on Monday to limit the extent to which the EPA can reach legal agreements with groups suing to force it to take regulatory action. Ending the practice known as 'sue and settle' has long been a top priority for conservatives and business groups. In recent years, especially under the Obama administration, the EPA and other agencies resolved litigation over delays in issuing rules by agreeing to specific timelines to act and reimbursing plaintiffs' attorney fees. In a news briefing, Pruitt said he was taking action to ensure that consent decrees 'are not used in an abusive fashion to subvert due process' and to exclude the public from weighing in. 'It's very important that we do not get engaged in regulation through litigation,' he said. 'This is something that is a long time coming with respect to this agency.'" ([The Washington Post](#), 10/16/17)

EPA Announces Settlement with Macy's over Hazardous Waste Violations ...

EPA Announces Settlement with Macy's over Hazardous Waste Violations. "Today, the U.S. Environmental Protection Agency (EPA) announced a settlement with Macy's Retail Holdings, Inc., (Macy's) over violations of hazardous waste regulations. In addition to correcting violations, Macy's will also develop a program with the capacity to train 400 retailers in Oklahoma and Texas, and conduct third-party audits at 11 of its largest facilities within Texas, Oklahoma, Louisiana and New Mexico, among other required actions. The company will also pay a \$375,000 civil penalty within 30 days of the effective date of the settlement, and must comply with all other requirements within one year..." ([EPA Press Release](#), 10/25/17)

Macy's sanctioned by EPA, regulator announces. "Macy's must pay a \$375,000 fine and train its employees in Oklahoma, Texas and other parts of the nation on how to properly dispose of hazardous materials, the U.S. Environmental Protection Agency announced on Wednesday. The regulatory action settles an action the EPA took against Macy's Retail Holdings Inc. for violations it accused the company of making at 44 locations in Texas and Oklahoma between 2012 and 2015. "The EPA takes hazardous waste regulations seriously, and we appreciate companies taking responsibility to correct violations," EPA Administrator Scott Pruitt said in a statement. "Appropriately managing hazardous waste from 'cradle-to-grave' is vital to protecting people's health and the environment." State environmental regulators expressed satisfaction with the agreement, adding they also applauded the requirement that Macy's train its employees to follow the law in the future ([News OK](#), 10/26/17)

EPA & DOJ Prosecute RIN Fraud ...

Renewable Fuel Trader Pleads Guilty to Conspiracy. "The owner of a company that buys and sells renewable fuel and fuel credits pleaded guilty in U.S. District Court for the Southern District of Ohio to conspiracy for his role in a scheme that generated over \$47 million in fraudulent EPA renewable fuels credits, and over \$12 million in fraudulent tax credits connected to the purported production of renewable fuel. The plea entered by the defendant, Gregory Schnabel, before U.S. Magistrate Judge Norah King was announced by Acting Assistant Attorney General Jeffrey H. Wood for the Justice Department's Environment and Natural Resources Division; U.S. Attorney Benjamin C. Glassman for the Southern District of Ohio; Special Agent in Charge Ryan L. Korner of the Internal Revenue Service (IRS) Criminal Investigation; Acting Special Agent in Charge John K. Gauthier, of the Environmental Protection Agency (EPA), criminal enforcement program in Ohio; and the Special Agent in Charge W. Jay Abbott of the Federal Bureau of Investigation's Indianapolis Division. "The defendant helped orchestrate a massive scheme to defraud the U.S. government, American taxpayers and his company's competitors," said EPA Administrator Scott Pruitt. "This case shows that EPA and its law enforcement partners are serious about ensuring a level playing field for businesses that follow the law and punishing those who break the rules in the name of personal gain." "The Department of Justice vigorously prosecutes those who defraud the federal government through unlawful RFS schemes like the one at issue in this case," said Acting Assistant Attorney General Wood. "We applaud the work of the DOJ and EPA law enforcement team that sought and obtained justice in this case." ... " ([DOJ Press Release](#), 10/23/17)

EPA Holds Potentially Responsible Parties Accountable for Contaminated Clean-Ups ...

EPA Settlement with UConn Resolves Improper PCB Disposal Activity. “The University of Connecticut has taken steps to ensure its PCB waste is properly disposed of in the future to settle claims by the U.S. Environmental Protection Agency (EPA) that it improperly disposed of PCBs during a 2013 renovation project at its Storrs campus. The university disposed of the waste containing polychlorinated biphenyls during a 2013 window replacement project in violation of the federal Toxic Substances Control Act. Working with its contractors and an environmental consultant, UConn’s renovation project led to the removal of soils contaminated with PCBs from the window caulk, which are classified as PCB "remediation waste." ([EPA Press Release](#), 10/31/17)

U.S. EPA Settles with 40 PRPs on Cleanup Plan For 68th Street Superfund “The U.S. Environmental Protection Agency announced a settlement today with more than 40 parties to clean up hazardous waste contamination at the 68th Street Dump/Industrial Enterprises Superfund Site in Baltimore County, Maryland. Under terms of the proposed consent decree filed in federal court in Baltimore, the parties are responsible to finance and perform a \$51.5 million EPA-approved cleanup, perform additional natural resources restoration work, and pay the state and federal natural resource trustees \$490,000 for past and future costs related to natural resource damages. Defendants are also required to pay \$630,000 for an off-site restoration project. The 12 parties that are responsible for performing the cleanup include: AAI Corporation; Acme Markets Inc.; AK Steel Corporation; Browning-Ferris, Inc.; Black & Decker (U.S.) Inc.; Brunswick Corporation; ConAgra Grocery Products Company, LLC; Crown Cork & Seal Company, Inc.; CSX Realty Development, LLC; CSX Transportation, Inc.; Exxon Mobil Corporation and Illinois Tool Works Inc. Along with these 12 parties, the other remaining parties contributed about \$18.8 million towards the settlement.

The 68th Street Site encompasses several landfills spread over a 239-acre area in Rosedale, Maryland. From the 1950s through the 1970s, these landfills accepted industrial and commercial wastes containing hazardous wastes, which contaminated soil, sediment, groundwater, surface water and wetland areas ([EPA Press Release](#), 10/13/2017).

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ADDITIONAL QUESTIONS FROM THE NEW YORK TIMES ABOUT AN ANALYSIS OF EPA ENFORCEMENT DATA

Here is an overview of the data

In the first nine months of Mr. Pruitt’s tenure at EPA, the agency sought civil penalties of about \$50.4 million from polluters stemming from new cases filed under Mr. Pruitt, which, adjusted for inflation, is about 70 percent of what the Bush administration sought and about 40 percent of what the Obama administration sought during the first nine months after their initial E.P.A. heads were confirmed.

Under Mr. Pruitt, the agency sought injunctive relief of about \$1.2 billion stemming from new cases filed under Mr. Pruitt. Adjusted for inflation, that’s about 47 percent of what was sought under Bush and about 12 percent of what was sought under Obama.

Under Mr. Pruitt, the EPA has filed at least 1,850 civil cases against polluters. Comparatively, the Bush and Obama administrations each filed more than 2,600 cases. Some enforcement experts have suggested that the EPA might have filed fewer cases because it was going after larger penalties. But most of the top fines and injunctive relief were smaller than those in the previous two administration.

The Times chose a nine-month window to examine because it included the single largest civil case that the EPA under Mr. Pruitt has filed, seeking \$2 million in penalties and \$300 million in injunctive relief against Exxon Mobil. Because the EPA’s public database of enforcement cases is not always updated in a timely fashion, The Times built its own database that also included Trump-era cases found in EPA and Justice Department press releases, the federal register, news reports and at other public sources. We would welcome your input on other cases that should be added.

Here's our Methodology

Our goal was to find a way to look at enforcement patterns during the start of the last three administrations.

We started with the assumption that Scott Pruitt began his tenure at EPA on Feb. 17, 2017. We pulled civil data through Nov. 9, 2017. That is 266 days, counting the end date.

For an apples to apples comparison, we pulled civil data from Lisa Jackson's tenure at EPA, which started on Jan. 23, 2009. We calculated 266 days from that date to be Oct. 15, 2009.

We also pulled civil data from Christine Todd Whitman's tenure at EPA, which started on Jan. 31, 2001. We calculated 266 days at Oct. 23, 2001.

We only pulled data for cases filed (sometimes referred to as a "start") under Mr. Pruitt, Ms. Jackson and Ms. Whitman. The analysis relied on cases started, rather than those concluded, because many cases completed during the first year of a new administration can reflect enforcement that started under the previous administration and is so far along that it is difficult to stop.

For the administrative cases, we pulled cases with complaints or proposed orders in those date ranges. We also pulled cases with final orders issued (but had no complaint or proposed order) in those date ranges.

For judicial cases, we pulled cases with complaints filed with the court in those date ranges.

We checked each 2017 judicial case's summary text in ECHO and also in the federal register, in EPA and DOJ press releases and on google to see if any settlement amounts were missing from the ECHO data. We also searched for cases that didn't make it into ECHO at all and found some large ones, including Exxon. Those were added to our database.

We checked every 2017 administrative case that didn't already have a settlement amount listed in ECHO with the ECHO text, which sometimes listed proposed settlements. To be conservative, we added those proposed settlements to the database as well, even though some may not have materialized.

The data for 2017 was most recently pulled on Nov. 28, 2017. We know that ECHO is not always updated in a timely way, which is why we searched other public sources for missing cases and settlement information. We ask that EPA please tell us if it wants to add any other cases to the 2017 datasets. We would be happy to do so.

We did not add any extra cases to the data from 2009 and 2001. It is pulled entirely from ECHO. We adjusted the totals for 2009 and 2001 for inflation.

We checked all of the data for duplicates and removed those that could be clearly identified.

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RESPONSE FROM THE EPA RELATED TO THE NEW YORK TIMES ANALYSIS OF EPA ENFORCEMENT DATA-

Since January 20, 2017, through the end of FY 2017, DOJ's Environment and Natural Resources Division, in coordination with EPA have imposed:

- More than \$1.72 billion in civil penalties, cost recovery, natural resource damages, and other monetary recoveries;
- More than \$2.91 billion in criminal fines, restitution, and other assessments; and
- More than \$3.13 billion in injunctive relief and environmental mitigation projects.

This administration is focused on achieving and maintaining compliance with environmental laws. That means aggressive enforcement against bad actors, and compliance assistance for small businesses. It also means focusing on the outcome of compliance. For example, the Agency's current Strategic Plan for FY 2018-2022 includes two new enforcement measures for reducing the time between identification and correction of environmental law violations and increasing the environmental law compliance rate. These outcomes can be achieved through a variety of enforcement tools.

With respect to the data pull from ECHO, the *Times* only looked at cases filed in the past nine months. It takes months or even years to develop a case to the point that a final order is lodged or a case has been filed, so data from the last nine months is not dependent solely on work that has been performed during this administration.

Additionally,

- As the recent report we discussed admits, "enforcement results may vary over the short term." This is nowhere more true than in judicial consent decrees. These are our most complex, significant cases, which take the longest to develop and conclude. Settlements lodged during the first nine months of this administration therefore have much more to do with the pace of enforcement near the end of the last administration, than the commitment to the rule of law and enforcement in this administration.
- Our enforcement data show that there was a drop in enforcement intensity during the first year of the Obama administration (measured by value of injunctive relief, penalties assessed, and environmental benefits).
- EPA's FY2017 enforcement accomplishments were dominated by the massive VW settlements. However, even backing out settlements like VW with penalties greater than \$1 billion, civil penalties collected in FY2017 (\$175 million) compare favorably to the Obama administration average of \$165 million.